Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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87-302

No.

IN THE SUPREME COURT FOR THE UNITED STATES OF AMERICA
TERM

THE AQUARIAN FOUNDATION, a Washington not-for-profit Corporation, and KEITH MILTON RHINEHART, a single person,

Appellant,

vs.

LAW OFFICES OF EDWARDS & BARBIERI, a professional service corporation,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

JURISDICTIONAL STATEMENT

Counsel for Appellant:

Jean Schiedler-Brown, P.S.
501 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
(206)223-1888

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

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EDITOR'S NOTE

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QUESTIONS PRESENTED

1. Does it violate a defendant's constitutional right to due process to strike its answer and enter a default judgment against it as a sanction for failing to disclose the address of a codefendant?

2. Must a court refrain from compelling disclosure of information protected by the First and Fourteenth Amendments where the litigant seeking to compel disclosure has failed to pursue reasonable alternative sources of obtaining the information?

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

LIST OF PARTIES TO THE PROCEEDINGS BELOW

LAW OFFICES OF EDWARDS & BARBIERI, a professional service corporation,

Plaintiff,

vs.

THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation, and KEITH MILTON RHINEHART, a single person. KATHI BAILEY and the marital community composed of KATHI BAILEY and WES BAILEY; TONY STRAUCH and the marital community composed of TONI STRAUCH and JOHN DOE STRAUCH; ILSE TAYLOR; and LILLIAN YOUNG and the marital community composed of LILLIAN YOUNG and STEVEN YOUNG,

Defendants.

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1688

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LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

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JEAN SCHEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1688

Decisions Below Unreported. File No. 157-186

GROUNDS FOR JURISDICTION

Nature of Proceedings: Action for attorneys fees. Discretionary review denied March 3, 1987, by Supreme Court, State of Washington (Appendix E) from an order denying a motion to modify entered in the Court of Appeals of the State of Washington, Division I, (Appendix D) of the Commissioner's ruling granting a motion on the merits (Appendix C), and affirming the decision of the trial court (Appendix A). (Notice of Petition for Review to the Supreme Court, State of Washington, from the Court of Appeals, Division I, filed on November 26, 1986.)

Jurisdiction conferred on this Court by 28 USC 2101(c).

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

PROVISIONS AND STATUTES INVOLVED IN APPEAL

See Appendix for

United States Constitution
RCW 5.60.060 (3)

THE FACTS

Appellant Aquarian Foundation is a non-profit Spiritualist Church, and was incorporated under the laws of the State of Washington in 1955. Appellant the Reverend Keith Milton Rhinehart is a member and official of the Church. Appellee Law Offices of Edwards and Barbieri ("Edwards & Barbieri") filed suit against Appellants in July, 1984, seeking to recover fees allegedly owing for legal services. Appellants had retained Edwards & Barbieri services in numerous matters over several years.

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

Edwards & Barbieri had represented other parties associated with Appellants in certain litigation, and asserted that Appellants were responsible for legal fees allocable to the other individuals. Appellants denied responsibility for legal fees allocable to the other parties. Edwards & Barbieri then amended its complaint to include five of these other parties.

Edwards & Barbieri served interrogatories on Appellants one of which requested the address and telephone number of two of the added defendants, Steven and Lillian Young.

Appellants objected to providing the information on the ground that it unduly infringed on their constitutional, religious, privacy and associational rights.

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

Appellants also objected on the ground that the information was protected from disclosure under the priest-penitent privilege. Finally, Appellants resisted disclosure on the ground that it would endanger the Youngs, who had been the recipient of threats of harm.

On September 19, 1985, Judge Faith Enyeart ordered that the address was to be disclosed, or Appellants' answer would be stricken and an order of default entered.

On October 25, 1985, Judge Jerome Johnson ordered Appellants' answer stricken and that they be deemed to be in default (Appendix A). They subsequently deposited approximately $70,000 into the court registry in lieu of supersedeas bond.

On October 25, 1985, Commissioner Jack Richey entered Findings of Fact, Conclusions of Law and judgment in the amount of

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

$50,317.70 jointly and severally against the Appellants. Thus, default judgment on the merits was awarded without any opportunity to present facts or argument on the merits.

Appellants appealed the judgment, filing an Amended Notice of Appeal on November 22, 1985 (Appendix B).

On appeal, Appellants asserted that the Order striking their answer and entering their default was improper, claiming that the Order Compelling Discovery denied Appellants' fundamental rights of privacy, freedom of association, and free exercise of religion. Appellants also asserted that the Order Compelling Discovery violated the priest-penitent privilege.

On April 14, 1986 Edwards & Barbieri filed a Motion on the Merits seeking dismissal of Appellants' appeal and requesting

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

attorney's fees on appeal. On August 28, 1986, Commissioner William Ellis granted the Motion on the Merits, upholding the default Judgment and awarding attorney's fees on appeal (Appendix C).

Appellants' motion to modify was denied by the Court of Appeals on October 27, 1986, (Appendix D). Appellants' subsequent Petition for Review was denied in Supreme Court, State of Washington, on March 3, 1986 (Appendix E).

QUESTIONS TIMELY RAISED ON APPEAL

The issue that striking Appellants' answer and declaring a default would constitute a denial of due process was raised in the Petition for Review to the Supreme Court, State of Washington. That Court denied review of this issue first raised in such Petition. Therefore, the only

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

issue ruled upon by the appellate court was issue #2 raised herein.

QUESTIONS ARE SUBSTANTIAL

Default judgments are not favored in the law. A default judgment is one of the most drastic actions a court may take to punish disobedience to its commands. Controversies should be determined on the merits rather than by default.

The striking of Appellants' answer and taking a default judgment for failure of Appellants to provide the addresses of co-defendants denied Appellants due process of law under the Fourteenth Amendment. The sanction was clearly intended as a punishment for disobeying the commands of the court to produce the addresses.

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1868

In Hovey v. Elliot, 167 US 409, 42 L Ed 215, 17 Sct 841 (1897), the U.S. Supreme Court considered:

> whether a court possessing plenary power to punish for comtempt, unlimited by statute, has the right to summon a defendant to answer, and then after obtaining jurisdiction by the summons, refuse to allow the party to answer or strike his answer from the files, suppress the testimony in his favor, and condemn him without consideration thereof and without a hearing, on the theory that he has been guilty of a contempt of court

167 US at 413.

The court held that a default judgment, entered after striking a defendant's answer as punishment for refusing to obey an order of the court, was void for want of due process of law. 167 US at 444-47.

In the subsequent case, Hammond Packing Co. v. Arkansas, 212 US 322,

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

53 L Ed 530, 29 S Ct 370 (1908), the Supreme Court upheld a default judgment taken following a defendant corporation's failure to comply with a court order to produce designated books and records. The Court distinguished Hovey as involving default as mere punishment, as opposed to the situation in Hammond, where the default taken was justified by the right of the courts to create a presumption flowing from the failure to produce material evidence. 212 US at 350.

In Societe International Pour Participations Industrielles et Commerciales, S.A. vs. Rogers, 357 US 197, 2 L Ed (2d) 1255, 78 S Ct 1087 (1958), the Supreme Court reviewed the Hovey and Hammond cases and stated that "These decisions established that there are constitutional limitations upon the power of courts,

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." 357 US at 209.

A party who refuses to make discovery opens itself up to being adjudged in contempt of court and to punishment and the court as a consequence may make such orders in regard to the refusal as are just, but the court cannot deny to that party the right to defend the action as mere punishment without depriving that party of a constitutional right.

Instead, the purpose of any order by the court should be to balance the rights of the parties so that the contemptor does not profit or benefit from the contemptuous act. Additionally, a presumption.

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

by the court, as a matter of law, that the evidence withheld by defendant would, if produced, contradict the contemptor's contentions and support the contentions of the requesting party, is not unreasonable.

In effect, the validity of an order striking a pleading is restricted to those cases where the failure to answer obviously withholds a fact or facts material to the adversary's case and should be limited to the effect that ensues from any reasonable presumption which may be drawn from the refusal to discover such fact or facts.

In the present case, Appellants' failure to disclose co-defendants addresses were clearly not material to issues presented in the complaint,

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

i.e., whether Appellants owed fees for legal services. At most, it might be construed as material to whether the parties' agreement made Appellants liable for legal fees incurred in representation of their co-defendants.

There is no presumption which can logically flow from petitioner's failure to disclose the address which would justify striking the Appellants answer in toto. The striking of Appellants' pleading was clearly done merely to punish Appellants. The contumacy of a party may justify his punishment for contempt, but it does not justify the taking of his property and giving it to another.

The striking of Appellants' answer was outside constitutional exercise of the court's power, as noted above. The denial of Appellants'

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

right to due process constitutes a manifest injustice, particularly since they have asserted strong defenses to the claims in the complaint. The order striking the pleading is thus invalid and the subsequent judgment is void for want of due process of law.

The default judgment taken against Appellants also deprived them of a jury trial. The right to a trial by jury in actions at law, such as this action for fees allegedly owing under a contract, is guaranteed by the Seventh Amendment to the Constitution of the United States. The default judgment was thus in violation of this constitutional right of Appellants.

This Court has not addressed squarely the case where default

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

judgment was entered against a party after its answer was stricken upon that party's refusal to respond to interrogatories. In addition, this court should accept this appeal because the decision of the Supreme Court, State of Washington, which let stand the default judgment is in conflict with the decisions of this court in Hovey, Hammond, and Societe.

2. The order of the trial court compelling disclosure violated Appellants' constitutional rights since less intrusive sources of information were available. Thus, the decisions of the appellate courts of the State of Washington upholding that order present a significant question under the Constitution of the United States which should be

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223 1888

reviewed by this Court.

Appellants resisted the Order Compelling Discovery on the grounds that it unduly infringed their consitutional rights. They also objected that the information was protected by the priest-penitent privilege. (The priest-penitent privilege is provided by RCW 5.60.060(3).) Finally, they resisted disclosure on the ground that it would endanger the Youngs, who had been the recipients of threats of harm.

State compelled disclosure of information protected by the First and Fourteenth Amendments must not only serve a compelling state purpose, but must also pursue such purpose by means that do not stifle fundamental liberties when an end can be more narrowly achieved. Shelton v. Tucker,

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

364 US 479, 488, 81 S Ct 247, 252, 5 L Ed 2d 231, 237 (1960). Even where information sought by a litigant is crucial to his case, every reasonable alternative source must be pursued before disclosure should be compelled. See Zerilli vs. Smith, 656 F2d 705, 713 (D.C. Cir. 1981); Riley v. City of Chester, 612 F2d 708, 717 (3d Cir.1979); Silkwood v. Kerr-McGee Corporation, 563 F2d 433, 438 (10th Cir. 1977); Baker v. F&F Investment, 470 F2d 778, 784 (2d Cir. 1972); Miller vs. TransAmerica Press Inc., 621 F2d 721, 716 (5th Cir. 1980).

Edwards & Barbieri sought to obtain the Young's address from the Aquarian Foundation and the Reverend Rhinehart so service of process could be effected upon Steven and Lillian Young in this litigation. Edwards and Barbieri

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

failed to pursue available alternative means of effecting process prior to the entry of the order compelling disclosure, and failed even to articulate either the consideration or outcome of alternative-albeit less convenient--means. An alternative requiring the taking of as many as 60 deposition was suggested as a reasonable prerequisite to compelled disclosure by the court in Carey v. Hume. 492 F2d 631, 639 (D.C. Cir. 1974). In the present case, the appellees had already demonstrated their willingness and ability to pursue a localized real property search, as a means to locate a title owner.

Service of process is possible in this case by means less intrusive upon the constitutional rights of the members of the Aquarian Foundation and Reverend Rhinehart. A patently obvious alter-

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

native -- service upon Steven Young at the Honolulu police station where he is employed -- had not been attempted or considered by Edwards & Barbieri. Clearly reasonable alternatives to compelled disclosure were not pursued by Edwards & Barbieri prior to the entry of the trial court's order compelling disclosure.

Dated this 29 day of April, 1987.

Jean Schiedler-Brown
Attorney for Appellant

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

SUPERIOR COURT OF WASHINGTON

FOR KING COUNTY

LAW OFFICES OF EDWARDS & BARBIERI, a professional service corporation, Plaintiff, vs. THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation, and KEITH MILTON RHINEHART, a single person; KATHI BAILEY and the marital community composed of KATHI BAILEY and WES BAILEY; TONI STRAUCH AND JOHN DOE STRAUCH; ILSE TAYLOR; and LILLIAN YOUNG and the marital community compsed of LILLIAN YOUNG and STEVEN YOUNG, Composed of Defendants.	No. 84-2-09847-3 ORDER STRIKING ANSWER, IMPOSING COMPENSATORY TERMS, AND ORDER OF DEFAULT

THIS MATTER having come on regularly before the above-entitled court upon the motion of the Plaintiffs and the court having considered the pleadings and affidavits and certificates filed in this

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

case and the prior orders of the court, and being fully informed and based upon the Motion For An Order Striking Answer And For Entry of Default and the court being fully advised, now therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

(1) The answers of defendant Keith Milton Rhinehart and of defendant the Aquarian Foundation are each stricken.

(2) The defendant Keith Milton Rhinehart and the defendant The Aquarian Foundation are each hereby declared to be in default. PLaintiff may prove their claim in the manner provided for proof of default judgments ex-parte in that department of this court.

(3) The defendant The Aquarian Foundation and the defendant Keith Milton Rhinehart are jointly and severally obligated to pay to the plaintiffs the sum of $932.50 as a compensatory award if defendants are

ORDER STRIKING ANSWER. APPENDIX A

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JEAN SCHEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

able, at some future date, to reinstate this lawsuit and vacate the Order of Default. If attorney's fees are ultimately awarded against the defendants The Aquarian Foundation and Keith Milton Rhinehart then the the court shall take into account the amount of terms previously paid to plaintiff. If this compensatory award has not been paid prior to entry of the judgment, this compensatory award shall be included as a part of that judgment and shall serve to reduce dollar for dollar the fees that otherwise would have been awarded.

Dated this 25th day of October, 1985.

Jerome M. Johnson /s/
J U D G E

Presented by:

EDWARDS & BARBIERI

By _____
Harold Goodfriend /s/
Attorney for Plaintiff

B/418H

ORDER STRIKING ANSWER. APPENDIX A

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

LAW OFFICES OF EDWARDS & BARBIERI, a professional service corporation, Appellee, vs. THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation, and KEITH MILTON RHINEHART, a single person; Appellants, KATHI BAILEY and the marital community composed of KATHI BAILEY and WES BAILEY; TONI STRAUCH and the marital community composed of TONI STRAUCH and JOHN DOE STRAUCH; ILSE TAYLOR; and LILLIAN YOUNG and the marital community composed of LILLIAN YOUNG and STEVEN YOUNG, Defendants.	No. 17405-3-I AMENDED NOTICE OF APPEAL TO COURT OF APPEALS

COMES NOW THE AQUARIAN FOUNDATION, INC., a Washington not-for-profit corporation, and KEITH MILTON RHINEHART, a single person, defendants herin and seek review by the designated Appellate Court of

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

(1) Judge Faith Enyeart's October 10, 1985 Order Denying Defendant's Motion for Reconsideration of the September 19, 1985 Order Compelling Discovery and for Terms, entered herein; (2) Judge George Mattson's October 16, 1985 Order of Default and Order Striking Answer; (3) Judge Jerome Johnson's October 25, 1985 Order Striking said Defendants' Answer, Imposing Compensatory Terms, and Order of Default; (4) Commissioner Jack Richey's October 25, 1985 Judgment, Findings of Fact and Conslusions of Law entered herein.

DATED this 22 day of November, 1985.

DONALD B. KRONENBERG, /s/
Attorney for Defendants
Aquarian Foundation and
Keith Milton Rhinehart

AMENDED
NOTICE OF APPEAL
TO COURT OF APPEALS
APPENDIX B

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1688

Attorney for Appellant:

Donald B. Kronenberg
Pacific Building, Suite 1212
720 Third Avenue
Seattle, WA 98104

Attorney for Appellee:

Malcolm L. Edwards
3701 Bank of California Center
Seattle, WA 98164

AMENDED
NOTICE OF APPEAL
TO COURT OF APPEALS
APPENDIX B

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION I

LAW OFFICES OF EDWARDS & BARBIERI, a professional service corporation, Respondent, vs. THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation, and KEITH MILTON RHINEHART, a single person, Appellants, KATHI BAILEY and the marital community composed of KATHI BAILEY and WES BAILEY; TONI STRAUCH and the marital community composed of TONI STRAUCH and JOHN DOE STRAUCH; ILSE TAYLOR; and LILLIAN YOUNG and the marital community composed of LILLIAN YOUNG and STEVEN YOUNG, Defendants.	No. 17405-3-I COMMISSIONER'S RULING GRANTING MOTION ON THE MERITS

The Aquarian Foundation and Keith Milton Rhinehart (Foundation) appeal a judgment in favor of the Law Offices

COMMISSIONER'S RULING GRANTING MOTION ON THE MERITS: APPENDIX C

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

of Edwards & Barbieri. Edwards & Barbieri has made a motion on the merits pursuant to RAP 18.14. The commissioner has heard oral argument and has determined that the motion should be granted.

FACTS

In 1984, Edwards & Barbieri brought suit for attorney fees allegedly owed to it by the Foundation for services rendered in several lawsuits. In answers to interrogatories, the Foundation asserted that it was not responsible for legal fees incurred in representing other individuals in the underlying actions. Edwards & Barbieri maintained that its representation of these parties was on behalf of the Foundation under an agreement providing that the Foundation was responsible for the cost of

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

this representation. Edwards & Barbieri was granted leave to amend its complaint to add these individuals as additional parties. Edwards & Barbieri then served interrogatories seeking the addresses of four of the additional defendants. The Foundation refused to provide an address for Lillian and Steven Young. Edwards & Barbieri moved to compel, agreeing in principle to a protective order. The Foundation resisted the motion but it was granted subject to a protective order on September 19, 1985. In the order the trial court provided:

> Should defendants fail to comply with the terms of this order they shall be held in default and their answer stricken. Information of Mr. Young's address is to be used by plaintiffs solely for the purpose of service of process and documents in this proceeding.

The Foundation moved for reconsideration and filed a supplemental brief in which

COMMISSIONER'S RULING GRANTING MOTION ON THE MERITS:APPENDIX C

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

it raised the issue of the priest-penitent privilege. The motion was denied.

The Foundation still refused to provide the address of Mr. Young and Edwards & Barbieri moved for default. This motion was conditionally granted if the Foundation did not comply by October 16, 1985. It did not, its answer was stricken, and it was found in default. A judgment followed. The Foundation appeals and presents two issues.

ISSUES

1. Did the trial court err in ordering the Foundation to provide the address of a named defendant, subject to a protective order, in violation of the organization's and the member's constitutional rights?

2. Did the trial court err in failing to apply the priest-penitent privilege, RCW 5.60.060(3)?

COMMISSIONER'S RULING GRANTING MOTION ON THE MERITS:APPENDIX C

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

CRITERIA FOR DETERMINING WHETHER TO GRANT A MOTION ON THE MERITS

RAP 18.14(e) provides:

> A motion on the merits will be granted in whole or in part if the appeal or any part thereof is determined to be clearly without merit. In making these determinations, the ... commissioner will consider all relevant factors including whether the issues on review (1)are clearly controlled by settled law, (2)are factual and supported by the evidence, or (3)are matters of judicial discretion and the decision was clearly within the discretion of the trial court.

In applying these criteria, the commissioner determines that the issues presented are clearly without merit.

DECISION

ISSUE 1. The Foundation argues that the order compelling disclosure of Young's address unconstitutionally denies Rhinehart amd members of the Foundation their fundamental rights of privacy, freedom of association, and free exercise of religion. It is well settled that assertion of these

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

rights is not an absolute bar to discovery. In Rhinehart v. Seattle Times Co., 98 Wn.2d 226, 257, 654 P.2d 673(1982), cert. denied, 467 U.S. 1230, 81 L. Ed. 2d. 884, 104 S. Ct. 2690 (1984), the court reviewed a similar claim and stated:

> certain invasions of those rights [rights of privacy and association] are necessary to enable the courts to render a just decision upon the relevant facts. The protective order shields the plaintiffs from abuse of the discovery privilege. The more extensive protection which they desire is within the discretion of the trial court in a proper case; but the plaintiffs are not entitled to such an order as a matter of right. There is no showing that the protective order is inadequate to prevent any abuse threatened by the defendants.

The United States Supreme Court, which denied the Foundation's petition for review but accepted that filed by the Seattle Times, held in Seattle Times v. Rhinehart, 467 U.S. 20, 81 L. Ed. 2d 17, 104 S. Ct. 2199, 2206 (1984), that the discovery

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

rules "often allow extensive intrusion into the affairs of both litigants and third parties" and that a court may enforce orders compelling discovery by order of contempt or by regarding certain facts as established. 104 S. Ct. at 2206 n. 17; See CR 37(b).

The issue is whether the trial court abused its discretion in fashioning its order after weighing the competing interasts of the parties. Rhinehart v. KIRO, 44 Wn. App. 707, 723 P.2d 22 (1986).

The order compelling discovery included a protective order limiting the use of the information sought by Edwards & Barbieri to service of process and other documents. The Foundation has failed to show in what ways the protective order is inadequate to protect its interests or those of the members whose addresses

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

were sought or in what way the trial court abused its discretion in ordering default as a sanction for refusal to comply with the discovery request. The sanction of default is clearly within the discretion of the court. CR 37(d); CR 37(b)(2)(c); Rhinehart v. KIRO, supra; Associated Mortgage Investors v. G.P. Kent Constr. Co., 15 Wn. App. 223, 229, 548 P.2d 558 (1976); see Gammone v. Clark Equip. Co., 38 Wn. App. 274, 280, 686 P.2d 1102 (1984). The Foundation's first contention is thus without merit.

ISSUE 2. The Foundation also contends that the trial court erred in ordering the disclosure of the address because it violated the priest-penitent privilege, RCW 5.60.060(3). This statute provides:

> The clergyman or priest shall not, without the consent of the person making the confession, be examined as to any confession made to him in

COMMISSIONER'S RULING GRANTING MOTION ON THE MERITS:APPENDIX C

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Seattle, Washington 98101
(206) 223-1888

> his professional character, in the course of discipline enjoined by the church to which he belongs.

The claimant has the burden of establishing the privilege. 8C. Wright & A. Miller, Federal Practice & Procedure § 2016 (1970). The communication must have been made in the course of discipline enjoined by the church to which the claimant belongs. See Angleton v. Angleton, 84 Idaho 184, 370 P.2d 788 (1962); Ball v. State, 275 Ind. 617, 419 N.F. 2d 137 (1981); S. Stone & R. Liebman, Testimonial Privilege § 6.10 (1983). The only evidence of church discipline was a conclusory statement by the Foundation's attorney that "disclosure was made within the professional character and course of the Young's discipline and unquestionably enjoined by the Spriritualist Church to which he belongs." This statement does not show a course

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501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

of discipline enjoined by the church which requires confession of an address. Next, the communication must have been made while seeking religious advice. See State v. Black, 291 N.W. 2d 208 (Minn. 1980). Although the Foundation argues in its brief that disclosure of the address was necessary to enable the exchange of religious communications and confession, there is no allegation in the pleadings that the address was given to seek religious advice. Instead, the Foundation argued that the need for secrecy was based on the possible destruction of the church. Thus, the Foundation did not make a showing sufficient to invoke the privilege.

In any event, the address of a litigant must be disclosed for the purpose of service of a court order, even where a privilege clearly exists. Dike v. Dike, 75 Wn.2d

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1, 12, 448 P.2d 490 (1968) (attorney-client); see Testimonial Privilege, supra at § 1.28. The Foundation's second argument is, therefore, also without merit.

Edwards and Barbieri has requested attorney fees on appeal based on its representation agreement with the Foundation. The trial court awarded fees below. By Affidavit, Edwards and Barbieri requests fees of $6,339.50. Of this amount, $2,227.50 is attributable to disputes over the amount of the supersedeas bond and will be disallowed. The remaining $4.112.00 is awarded as requested. Now, therefore, it is hereby

ORDERED that the motion on the merits is granted and the decision of the trial court is affirmed; and, it is further

ORDERED that Edwards and Barbieri is awarded $4112.00 as attorney fees on appeal.

COMMISSIONER'S RULING GRANTING MOTION ON THE MERITS:APPENDIX C

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

Done this 28th day of August, 1986.

William H. Ellis /s/
Court Commissioner

COMMISSIONER'S RULING GRANTING MOTION ON THE MERITS:APPENDIX C

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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

LAW OFFICES OF EDWARDS & BARBIERI, a professional service corporation, Respondent, vs. THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation, and KEITH MILTON RHINEHART, a single person, Appellants, KATHI BAILEY and the marital community of KATHI BAILEY and WES BAILEY; TONI STRAUCH and the marital community composed of TONI STRAUCH and JOHN DOE STRAUCH; ILSE TAYLOR; and LILLIAN YOUNG and the marital community composed of LILLIAN YOUNG and STEVEN YOUNG, Defendants.	No. 17405-3-I ORDER DENYING MOTION TO MODIFY

The Aquarian Foundation and Keith Milton

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

Rhinehart have filed a motion to modify a commissioner's ruling granting a motion on the merits and affirming the decision of the trial court. A panel of the court has considered the matter pursuant to In re Marriage of Wolfe, 99 Wn.2d 531, 663 P. 2d 469 (1983) and RAP 17.7, and has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion to modify is denied.

Done this 27th day of October, 1986.

Williams, J./s/

Grosse, J./s/

Pekelis, J./s/

ORDER DENYING
MOTION TO MODIFY-2:APPENDIX D

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

The Supreme Court

State of Washington
Olympia
98504-0511

March 3, 1987

Ms. Jean Schiedler-Brown
Attorney at Law
501 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101

Edwards & Barbieri
Mr. Malcolm Edwards
Mr. Charles K. Wiggins
6501 Columbia Center
701 Fifth Avenue
Seattle, WA 98104

Mr. Keith Milton Rhinehart
315 15th Avenue East
Seattle, WA 98112

Re: Supreme Court No. 53372-5- Law Offices of Edwards & Barbieri v. The Aquarian Foundation.

Court of Appeals No. 17405-3-I

Counsel:

The above entitled petition for review was considered by the Court on its March 3, 1987, petition for review calendar.

LETTER FROM THE
SUPREME COURT OF
OLYMPIA, WASHINGTON-1:APPENDIX E

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

The petition was denied by order number 157/186 filed on March 3, 1987.

Very truly yours,

REGINALD N. SHRIVER/s/
Supreme Court Clerk

RNS:crf

LETTER FROM THE
SUPREME COURT OF
OLYMPIA, WASHINGTON-2:APPENDIX E

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of greivances.

Amendment 7

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION of the UNITED STATES FIRST, SEVENTH, and FOURTEENTH AMENDMENTS:APPENDIX F

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

RCW 5.60.060

EVIDENCE - WITNESSES - COMPETENCY - WHO ARE DISQUALIFIED - PRIVILEGED COMMUNICATION - PRIEST AND PENITENT

(3) A clergyman or priest shall not, without the consent of a person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

RCW 5.60.060 (3)
APPENDIX G

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888

Received
May 8, 1987
CLERK OF COURT OF APPEALS
STATE OF WASHINGTON

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION I

THE AQUARIAN FOUNDATAION, a Washington not-for-profit corporation, and **KEITH MILTON RHINEHART**, a single man. Appellant, vs. **LAW OFFICES OF EDWARDS & BARBIERI**, a professional services corporation, Appellee.	NO. 17405-3-I NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

Atached is a true copy of a notice of appeal to the U.S. Supreme Court, appealing this court's disposition

Appendix H
PROOF OF SERVICE ON WASHINGTON COURTS

LAW OFFICES OF
JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave
Seattle, Washington 98101
(206) 223-1888

of this Matter.

DATED this 7th day of May, 1987.

_____
Jean Schiedler-Brown
Attorney for Appellants

Appendix H
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501 Melbourne Tower 1511 Third Ave.
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Received
May 8, 1987
CLERK OF SUPREME COURT
STATE OF WASHINGTON

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation, and **KEITH MILTON RHINEHART,** a single man, Appellant, vs. **LAW OFFICES OF EDWARDS & BARBIERI,** a professional services corporation, Appellee.	NO. 53372-5 NOTICE OF APPEAL TO THE UNITED STATES SUPREME CUORT

Atached is a true copy of a notice of appeal to the U.S. Supreme Court appealing this court's disposition

Appendix H
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501 Melbourne Tower 1511 Third Ave.
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(206) 223-1888

of this matter.

DATED this 7th day of May , 1987.

JEAN SCHIEDLER-BROWN
ATTORNEY FOR PETITIONER

THE LAW OFFICES OF JEAN
SCHIEDLER-BROWN & ASSOC., P.S.

Appendix H
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JEAN SCHIEDLER-BROWN P.S.
501 Melbourne Tower 1511 Third Ave.
Seattle, Washington 98101
(206) 223-1888